

Amended

IN THE SUPREME COURT OF THE STATE OF UTAH

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Regular October Term, 1959

December 9, 1959

Spanish Fork West Field Irrigation
Company, a corporation, et al.,
Plaintiffs and Respondents,

v.

REMITTITUR
No. 8994

18542

The United States, a Nation, et al.,
Defendants,
State Engineer of the State of Utah,
Appellant.

This cause having been heretofore argued and submitted
and the Court being sufficiently advised in the premises, it is now
ordered, adjudged and decreed that the judgment of the District Court
herein be, and the same is, reversed, with directions to enter judgment
in accordance with the views expressed in the opinion filed herein.
No. costs awarded.

REMITTITUR

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Spanish Fork West Field Irrigation
Company, a corporation, et al.,
Plaintiffs and Respondents,

v.

No. 8994

The United States, a nation, et al.,
Defendants,

State Engineer of the State of Utah,
Appellant.

FILED
DEC 9 - 1959

Clerk, Supreme Court, Utah

WADE, Justice:

Plaintiffs represent the water users of the five original canal companies which were the first appropriators of the waters of the Spanish Fork River. They seek a declaratory judgment that their rights to use up to 390 cubic feet per second of the Spanish Fork River water are prior to the rights of the United States. They also seek a declaration that under their contracts with the United States for supplemental waters from the Strawberry Valley Reservoir that the Highline Canal water users, whose only source of water supply is the government, appropriated high waters of the Spanish Fork River and the storage waters of the Strawberry Valley Reservoir, must, as against the plaintiffs have credited on their contracts for water from the government, all the water which they receive both from the Spanish Fork River and the reservoir.

Practically all the users of the Spanish Fork River waters have contracts with the government to use government appropriated waters from the reservoir. More than half of the water users of this project receive part of their supply of government appropriated waters from the Spanish Fork River. There are hundreds of water user government contracts each specifying a limit to the number of acre feet which the government agrees to furnish to such water users annually. Usually the limit is two acre feet per acre, with some contracts specifying more and some less than that amount. The government has fixed an over-all limit to the number of acre feet per season which it would contract to deliver but the amount actually contracted to be delivered is less than such fixed amount.

The Strawberry Reservoir storage capacity exceeds 270,000 acre feet. The amount of water available for storage in the reservoir fluctuates greatly from year to year. The smallest recorded supply was 8,153 acre feet for 1934, and the largest was 153,668 acre feet for 1952, with an average annual yield of 61,688 acre feet from 1913 to and including 1955. Only 13 years during that period of 42 years has the project failed to deliver 100% of the water called for under these contracts. Such years were 1932 through 1945, except in 1939, when 100% delivery was made. The plaintiffs' project water supply comes exclusively from the reservoir and of course they cannot complain about how the water is charged on defendants' contracts as long as 100% of the water contracted for is delivered. However, during the years when 100% of the water contracted for is not available if defendants' contracts are not credited with the full amount of the water which they receive from the river then the defendants will take a larger share of the reservoir waters and the amount available to plaintiffs from the reservoir will to that extent be reduced.

From 1926 to the present time the Water Users Association, an organization of the water users of the waters of this project, has managed the project under a contract with the United States. Nine of the 16 directors of the association are elected from districts made up of defendants' interests.

Because of the great number of interested parties plaintiffs sue as representatives of a class and join the defendants as representatives of the opposing class.¹ Among the defendants is the United States which built

1. See Rule 23, Utah Rules of Civil Procedure.

and still owns the reclamation project, some governmental executive officers connected with the project, the Strawberry Water Users Association, High Line Canal Companies, the Utah State Engineer and others, some of whose interests were the same as plaintiffs but who refused to join as plaintiffs.²

The trial court refused to dismiss the case against the United States, or its officers. It held that plaintiffs' rights to use up to 390 second feet of the Spanish Fork River water are prior to the rights of the United States. It refused to require that full credit be charged against defendant water users for all Spanish Fork River waters used by them under contracts with the United States. It made a formula by which such charge should be determined. It required the State Engineer to make certain estimates and regulations and retained jurisdiction of the matter for 10 years.

The defendants appeal and the plaintiffs cross-appeal. Defendants contend 1) that the finding that plaintiffs have up to 390 second feet prior right to the use of Spanish Fork River waters is not supported by substantial evidence, 2) that the United States is immune from this suit, 3) that the trial court correctly held that the defendants should not be charged with all the waters they use from Spanish Fork River, 4) that the formula for determining the defendants' charge for river waters used is not related to the contract and usurps an executive function, 5) that the court's directions to the State Engineer were erroneous, and 6) the court erred in retaining jurisdiction for 10 years. We consider these contentions in the order named.

1) The evidence supports the finding that plaintiffs have priority in the use of up to 390 second feet of Spanish Fork River waters. Plaintiffs allege and originally defendants admitted that the United States had by express contract with each plaintiff canal company recognized the priority of plaintiffs to the river waters amounting to a total of 390 second feet. During the trial defendants amended their answers to deny such allegations. These denials were based on the McCarty decree of 1899 and the Booth decree of 1901, which adjudicated only 243 second feet of the Spanish Fork River to plaintiffs.

A contract between each plaintiff canal company and the United States made at the beginning of the operation of this project was introduced in which the United States expressly recognized the validity of plaintiffs' claims. Testimony was also received that throughout the entire operation of the project the United States had recognized the validity of plaintiffs' prior claims to the use of this river water up to 390 second feet. The record discloses no evidence to the contrary. This finding was reasonable and is affirmed.

2) The United States is not immune from this action. 43 U.S.C.A., Section 666 provides:

"Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system, or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under state law by purchase or exchange or otherwise and the United States is a necessary party to such suit. The United States, when a party to any such suit shall (1) be deemed to have waived any right to plead that the state laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders and decrees of the court having jurisdiction, and may obtain review thereof in the same manner and to the same extent as a private individual under like circumstances; Provided, That no judgment for costs shall be entered against the United States in any such suit."

This is a clear consent of the United States to the maintenance of this suit. It is clearly an adjudication of the rights to use the waters of a river system. It also is a suit for the administration of such rights, and

2. See Rule 19, Utah Rules of Civil Procedure.

here the United States is the owner of water rights of this system and is a necessary party to this action. We conclude that the United States has consented to this action.

3) The court correctly held that the defendant water users need not be charged the full amount of the water which they use from the river. The defendants, appellants here, agree with the above proposition but plaintiffs, cross-appellants here, strenuously disagree therewith. Their disagreement is based on the fact that the government expressly limited the number of acre feet of water it would contract to furnish to all water users from this project and the following or similar provision in all the contracts between the government and water users for the furnishing of project waters:

"The quantitative measure of water right hereby applied for is that quantity of water which shall be beneficially used for the irrigation of said irrigable land up to, but not exceeding two (2) acre feet per acre per annum, measured at the head of Strawberry High Line Canal, and in no case exceeding the share proportionate to irrigable acreage of the water supply actually available as determined by the Project Manager or other proper officer of the United States, or its successor, in the control of the project during the irrigation season for the irrigation of the lands under said unit."

This limitation that the water supplied to the water users shall "not exceed 2 acre feet per acre per annum" and shall in no case exceed "the share proportionate to irrigable acreage of the water supply actually available" with over-all limit to the amount of acre feet which the government would contract to supply from the project indicates an intention that each project water user is entitled to his proportionate share of the water supply for each year. This construction, if there were no other factors, would, in fairness to plaintiff water users, require that all the water used by the defendant water users both from the river and the reservoir be credited as a part of the water which the government contracted to furnish to them. It would reduce the amount of water available for the plaintiff water users who use only reservoir waters from this project, if the water which defendant water users use from the river were only partly counted as a part of the water which the government contracted to supply to them. This is especially true of years when the full contract water supply is not available, and it would reduce the reservoir supply for future years even in years when the full supply was furnished.

Usually for a short time each spring there is more water in the Spanish Fork River than is beneficially used. There is no reservoir or other means of storing these runoff waters. Often a part of such surplus water is diverted into the canals for cleaning purposes to wash moss, silt and debris out of the canal. Such water which is not actually used for irrigation of his land of course cannot be counted as a part of the government contract water supply furnished to a defendant water user.

Some years the river threatens or actually reaches flood proportions, creating a flood control problem. As a flood control measure the canals are filled and the water users are urged to divert the water onto their lands if they can do so in safety, though the land may be already saturated from storms. Water used as a flood control measure should not be counted as water furnished from the project under government contracts.

Finally there is the situation of an ample supply of water in the river and not much need for water on the land. If as much of the river water as can be beneficially used is used as long as the supply lasts the demand for reservoir water will thereby be delayed and the total amount of reservoir water required reduced. This will make a saving of reservoir water to the benefit of all concerned. The reservoir water which can be used after the high water has subsided is much more valuable than the river runoff water when there is more than enough. By reducing the price of the surplus river water and by not counting the full amount used as a part of the amount to be furnished to the water users under the government contracts more river water may be used and less reservoir water required. Under such circumstances when there is evidence that a saving of reservoir water may thereby be effected the project management could offer such reductions to the water users in order to effect a saving of the reservoir water. Such action, if held to reasonable limits would benefit both plaintiffs and defendants. For the purpose of saving reservoir water the

project management is authorized to reduce these charges.

4) The court's formula for reducing these charges would seem to handicap the management rather than be useful. The time when the credit for water used should be reduced requires good judgment and sound discretion, in the light of all available knowledge of the facts and circumstances. This cannot be produced by a formula. Such reduction is permissible only for the purposes above approved and when there is a reasonable certainty that such purposes will thereby be accomplished.

5) No good reason is shown for taking from the United States and the project management certain engineering functions and giving them to the State Engineer. No doubt these two departments should work together. But the decreed change made is not justified.

6) No justification for the court retaining jurisdiction is shown. Both sides object thereto. That provision should be eliminated.

Reversed, with directions to enter judgment in accordance with the views herein expressed.

No costs awarded.

WE CONCUR:

J. Allan Crockett, Chief Justice

Roger I. McDonough, Justice

E. R. Callister, Justice

HENRIOD, Justice: (Concurring and dissenting)

I concur, save for the conclusion that the U.S. waived its immunity. The petition and its prayer clearly envision a cause seeking a declaration that the administrators, (not the U.S.) for the use of the subject water, should charge early spring runoff water users 100% of the spring water they used against their later-season contracted, permanent reservoir water rights. The U. S.'s appropriated rights were admitted and unassailed. No conflict was asserted between it and any other appropriator. No allegation suggested any design to compel an adjudication of the rights of the U. S. There was no contention that the U. S. was an administrator of rights or that it objected to any existing administration thereof. The petition's prayer does not hint that the U. S. was a "necessary party" as that phrase connotes. From a casual reading of 43 U.S.C.A., 666, it seems obvious that the U. S. did not waive its sovereign immunity.

UNITED STATES OF AMERICA

State of Utah }
County of Salt Lake } ss.

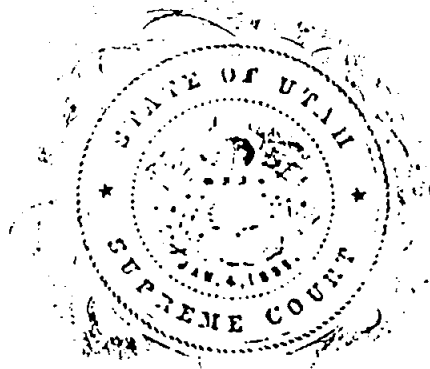
I, L. M. CUMMINGS, Clerk of the Supreme Court of the State of Utah, do
hereby certify that the foregoing is a full, true and correct copy of the judgment rendered
and opinion filed
in the foregoing entitled action, now of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand

and affixed the seal of said Supreme Court this

the 30th

day of December A. D. 1959.



L. M. Cummings
Clerk, Supreme Court

By Beverly Hansen
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SPANISH FORK WEST FIELD IRRIGATION)
COMPANY, a corporation, ET AL.,

Plaintiffs,

v.

THE UNITED STATES, ET AL.,

Defendants.)

AMENDED FINDINGS OF FACT -

AND CONCLUSIONS OF LAW

NO. 18,826

*(As amended by court
for U.S.)*

This cause came on regularly for hearing before the Court sitting without a jury on the 7th day of January, 1957. The parties appeared by their attorneys, and evidence was offered and received in support of the issues raised by the pleadings. At the conclusion of the evidence, the Court heard the arguments of counsel and granted leave to file written briefs. Counsel filed written briefs and further hearing was had. The Court having heard the evidence, the oral arguments of counsel, and having read the briefs filed by them, has heretofore made Findings of Fact, Conclusions of Law and entered its Decree. Thereafter an appeal was taken to the Supreme Court of Utah by the defendants.

After a hearing was had in the Supreme Court of Utah, the Decree entered by this Court was reversed and this Court was directed to enter judgment in accordance with the views expressed in the opinion of the Supreme Court. In order that the Decree ordered by the Supreme Court may be appropriately supported, it is deemed necessary to make amended Findings of Fact, Conclusions of Law and Decree to conform therewith.

NOW, THEREFORE, in conformity with the opinion of the Supreme Court of Utah, the Findings of Fact and Conclusions of Law heretofore entered herein are amended to read as follows:

FINDINGS OF FACT

1. That plaintiffs represent the water users of the five original canal companies which were the first appropriators of the waters of the Spanish Fork River.

2. That in about 1907 defendant United States, pursuant to Federal Reclamation Law, began the construction of an irrigation project, known as the Strawberry Valley Reclamation Project, for the purpose of securing an additional water supply for lands in the southerly part of Utah County; that in furtherance of such plan to secure an additional water supply, the defendant United States appropriated a right to the use of water for storage in the Strawberry Reservoir, to be constructed as part of the project, which waters had theretofore flowed through the Duchesne, Green and Colorado Rivers down into the Gulf of California, and the United States is now the owner of such right; that the United States also appropriated for the Project and is the owner of the following direct flow rights to the use of water in Spanish Fork River:

- (a) a right to the use of a flow of 156 cubic feet per second of the waters of Spanish Fork River for the generation of power, extending throughout the year, with a priority date of December 6, 1906.
- (b) a right to the use of a flow of 300 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of February 4, 1909.
- (c) a right to the use of a flow of 90 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of September 17, 1914.

3. That the plaintiff canal companies and defendants Salem Canal and Irrigation Company, Spanish Fork South East Irrigation Company and Spanish Fork City have appropriative rights to use the natural flow of Spanish Fork River which the United States

has by contract recognized as being prior in time to its direct flow rights to use the waters of said river; that under such rights said canal companies and said City are entitled to divert the following quantities of the natural flow of Spanish Fork River:

Spanish Fork East Bench Canal Company	95 c.f.s.
Salem Canal and Irrigation Company	55 c.f.s.
Spanish Fork South Irrigation Company	75 c.f.s.
Lake Shore Irrigation Company	60 c.f.s.
Spanish Fork West Field Irrigation Company	
Spanish Fork City and Spanish Fork South	
East Irrigation Company through Mill Race	
Canal	<u>105 c.f.s.</u>
Total	390 c.f.s.

4. That beginning in the early part of 1913 the defendant United States entered into contracts with several hundred individual landowners for water made available by the project, under which contracts the several landowners, subject to payments being made as required and subject further to the provisions of the Reclamation Law of the United States, are entitled to receive project waters.

5. That title to the project works is in the United States until otherwise provided by the Congress of the United States.

6. That by contract dated September 28, 1926, with the defendant Strawberry Water Users' Association, the United States turned over the care, operation and maintenance of the project works, except for the High Line Canal and Mapleton-Springville Lateral, to the Association and the Association agreed by the terms thereof to operate the project "in full compliance with the reclamation law as it now exists (or as it may hereafter be amended), the regulations of the Secretary now and hereafter made thereunder, and the terms of this contract. * * *" The project works have been operated and maintained by said Association under said contract since the date thereof.

7. That under said contract, the Association is charged with the distribution of the project water supply to the water users entitled thereto.

8. That there are times when the project river water is diverted for the purpose of cleaning canals or as a flood control measure and not for irrigation; that it is proper that such uses not be counted as a part of the project water supply to be furnished to the water users under their respective contracts with the United States.

9. Because the time of high water in the Spanish Fork River is ordinarily ~~present~~ in the early part of the irrigation season within the project, it frequently happens that there is an ample supply of direct flow water in the river and not much need for water on the land. The project reservoir water which can be used after the high water has subsided is much more valuable than the river runoff water when there is more than enough. To encourage the beneficial use on the project of the available river water while the supply lasts, the Association has followed the practice of reducing the price of surplus river water and not charging in full the amounts used against the amounts to be furnished to the several water users under their contracts with the United States. Thereby the demand for reservoir water has been delayed and the total amount of reservoir water required reduced. By this practice there has been affected a saving of reservoir water to the benefit of all project water users and its continuation within the good judgment and sound discretion of the project management for the purpose of saving reservoir water infringes on no right or rights of the plaintiffs or other project water users.

CONCLUSIONS OF LAW

1. The Strawberry Valley Reclamation Project is a reclamation project of the United States, built and operated under and ~~amendatory~~ ^{amendatory} thereof and in pursuance of the Reclamation Act of 1902 and acts/ supplemental thereto.

2. That title to the project works is in the United States until otherwise provided by act of Congress.

3. That in addition to its right to store in the Strawberry Reservoir and use on the project waters diverted from the Colorado River watershed, the United States is the owner of the following direct flow rights to the use of water in Spanish Fork River on the Project:

- (a) a right to the use of a flow of 156 cubic feet per second of the waters of Spanish Fork River for the generation of power, extending throughout the year, with a priority date of December 6, 1906.
- (b) a right to the use of a flow of 300 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of February 4, 1909.
- (c) a right to the use of a flow of 90 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of September 17, 1914.

4. That by contract with the United States the defendant Strawberry Water Users' Association is charged with the care, operation and maintenance of the project, except the High Line Canal and the Mapleton-Springville Lateral, and with distribution of the project water supply.

5. That contracts between the United States and the respective project water users, in the form of approved applications, have been made, beginning in 1913, under which the several water users, subject to payments being made as required thereunder and subject to the ~~amendatory~~ ^{amendatory} thereof and provisions of the Reclamation Act of 1902 and acts/supplemental thereto, are entitled to receive project waters.

6. That in order to reduce the demand for and to conserve project reservoir water the project management, in the exercise of good judgment and sound discretion, may make, against the amounts of project water to be furnished to the several water users under their contracts with the United States, lesser charges than the full amounts thereof on account of the quantities of project river water delivered to such users; that the project management may likewise omit any charge against project water users for project river water diverted for the purpose of cleaning canals or as a flood control measure.

7. That the plaintiff canal companies and defendants Salem Canal and Irrigation Company, Spanish Fork South East Irrigation Company and Spanish Fork City have appropriative rights to use the natural flow of Spanish Fork River which the United States has by contract recognized as being prior in time to its direct flow rights to use the waters of said river; that under such rights said canal companies and said City are entitled to divert the following quantities of the natural flow of Spanish Fork River:

Spanish Fork East Bench Canal Company	95 c.f.s.
Salem Canal and Irrigation Company	55 c.f.s.
Spanish Fork South Irrigation Company	75 c.f.s.
Lake Shore Irrigation Company	60 c.f.s.
Spanish Fork West Field Irrigation Company	
Spanish Fork City and Spanish Fork South East Irrigation Company through Mill Race Canal	<u>105 c.f.s.</u>
Total	390 c.f.s.

Dated this _____ day of _____, 1960.

BY THE COURT.

JUDGE

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IN THE DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH

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SPANISH FORK WEST FIELD IRRIGATION COMPANY, a corporation, et al.,	:	
	:	
Plaintiffs,	:	<u>AMENDED CONCLUSIONS</u>
	:	<u>OF LAW</u>
v.	:	
	:	
UNITED STATES, a nation, et al.,	:	No. 18,826
	:	
Defendants.	:	
	:	

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This cause came on regularly for hearing before the Court sitting without a jury on the 7th day of January, 1957. The parties appeared by their attorneys, and evidence was offered and received in support of the issues raised by the pleadings. At the conclusion of the evidence the Court heard the arguments of Counsel and granted leave to file written Briefs. Counsel filed written Briefs and further hearing was had. The Court having heard the evidence, the oral arguments of Counsel and having read the Briefs filed by them has heretofore made Findings of Facts, Conclusions of Law and entered its Decree. Thereafter an appeal was taken to the Supreme Court of Utah by plaintiffs and a Cross-Appeal taken by defendants.

After hearing was had in the Supreme Court of Utah some of the provisions of the Decree rendered by this Court were reversed or eliminated, and this Court was directed to enter judgment in accordance with views expressed in the opinion of the Supreme Court. In order that a Decree directed to be entered by the Supreme Court may be supported by the Conclusions of Law, it is deemed necessary to make amendments of the Conclusions of Law in order to conform with the opinion of the Supreme Court of Utah rendered herein.

NOW, THEREFORE, in conformity with the opinion of the Supreme Court of Utah, the Conclusions of Law heretofore entered herein are amended to read as follows:

1. That the approved applications for water rights in the Strawberry project constitute contracts between the United States and the applicants.
2. That, under such approved applications, and subject to payments being made as thereby required, the applicants acquired equitable interests in the Strawberry project water rights. That such rights are subject to the pro-

visions of the Reclamation Act, which, among other things, provides that the title to reservoirs and the works necessary for their protection shall remain in the government until otherwise provided by Congress.

3. That by its application filed in the office of the State Engineer of Utah in the year 1906, and the Certificate of Appropriation thereafter issued pursuant thereto, the United States acquired a right to the use of a flow of 156 cubic feet per second of the waters of Spanish Fork River throughout the year for generating power.

4. That by its application filed in the office of the State Engineer of Utah on or about February 4, 1909, and the Certificate of Appropriation thereafter issued pursuant thereto, the United States acquired a right to the use of a flow of 300 cubic feet per second of the waters of Spanish Fork River for use in the irrigation of lands from March 1st to November 1st of each year.

5. That by its application filed in the office of the State Engineer in the year 1914, and the Certificate of Appropriation thereafter issued pursuant thereto, the United States acquired a right to the use of a flow of 90 cubic feet per second of the waters of Spanish Fork River for use in the irrigation of lands from March 1st to November 1st of each year.

6. That the East Bench Canal Company, formerly known as the Spanish Fork East Bench Canal and Manufacturing Company, a corporation, has a right to a flow of 95 cubic feet per second of the waters of Spanish Fork River for use in the irrigation of lands of its stockholders. Such right extends from March 1st to November 1st of each year.

7. That the Salem Canal and Irrigation Company, a corporation, has a right to a flow of 55 cubic feet per second of the waters of Spanish Fork River for use in the irrigation of the lands of its stockholders. Such right extends from March 1st to November 1st of each year.

8. That the Spanish Fork South Irrigation Company, a corporation, has a right to a flow of 75 cubic feet per second of the waters of Spanish Fork River for the use of the irrigation of the lands of its stockholders. Such right extends from March 1st to November 1st of each year.

9. That the Lake Shore Irrigation Company, a corporation, has a right to a flow of 60 cubic feet per second of the waters of Spanish Fork River. Such right extends from March 1st to November 1st of each year.

10. That Spanish Fork West Field Irrigation Company, a corporation, Spanish Fork Southeast Irrigation Company, a corporation, and Spanish Fork City,

a municipal corporation, have a right to a flow of 105 cubic feet per second of the waters of Spanish Fork River, such rights are divertable through what is known as the Mill Race, and extends from March 1st to November 1st of each year, and is for use in irrigating the lands of the stockholders of the Spanish Fork West Field Irrigation Company, and the lands of the stockholders of the Spanish Fork Southeast Irrigation Company, and the lands of the inhabitants of Spanish Fork City.

11. That the rights of East Bench Canal Company, a corporation, Salem Canal and Irrigation Company, a corporation, Spanish Fork South Irrigation Company, a corporation, Lake Shore Irrigation Company, a corporation, Spanish Fork West Field Irrigation Company, a corporation, Spanish Fork Southeast Irrigation Company, a corporation, and Spanish Fork City, a municipal corporation, and each of them, in and to the above mentioned quantity of water of Spanish Fork River is prior in time and superior in right to the rights in such water acquired by the United States by reason of its having filed upon some of the water of Spanish Fork River.

12. That water rights acquired by the United States in the flow of the water of Spanish Fork River under its appropriation constitute a part of the Strawberry Project.

13. That by their applications for water rights in the Strawberry project, the applicants, upon approval of their applications and subject to payments required of them, acquired rights to share ratably, in proportion to the number of acre feet applied for, in the waters of the project as a whole, including both storage water and water available under appropriations by the United States in the flow of the Spanish Fork River.

14. That the Strawberry Water Users Association, in its management and operation of the Strawberry Project, does not have the right to allow diversion of water from the river without making a just and equitable charge against the user thereof.

15. That the charge to be made should be adequate to properly and equitably protect the rights of other applicants holding approved applications under the project.

16. That, since it appears reasonably probable that, if a 100 per cent charge is made for water diverted during early spring or periods of flood or high water, a substantial portion of such water will go unused and be lost to the

project, the use of project river water during such periods should be permitted at a lesser percentage of charge but which will be equitable and just, after giving due consideration to value of use of the water at the time and to conservation of stored water and also due consideration to the rights of all other owners of approved applications under the project.

17. That all water users should be charged in full for water used either from storage or from project river water during periods when storage water is being released. The term "project river water" as herein used refers to water from Spanish Fork River available under appropriations made by the United States in the flow of Spanish Fork River.

18. That no costs should be awarded to any of the parties herein.

Dated this 16 day of June, 1960.

BY THE COURT:

Will L. Hoyt
JUDGE

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SPANISH FORK WEST FIELD IRRIGATION
COMPANY, a corporation, ET AL.,

Plaintiffs,

v.

THE UNITED STATES, ET AL.,

Defendants.

AMENDED DECREE

NO. 18,826

(as proposed by counsel
for U. S.)

This cause came on regularly for hearing before the Court sitting without a jury on the 7th day of January, 1957. The parties appeared by their attorneys and evidence was offered and received in support of the issues raised by the pleadings. At the conclusion of the evidence, the Court heard the arguments of counsel and granted leave to file written briefs. Counsel filed written briefs and further hearing was had. The Court having heard the evidence, the oral arguments of counsel and having read the briefs filed by them, has heretofore made Findings of Fact, Conclusions of Law and entered its Decree.

After a hearing was had in the Supreme Court of Utah, the Decree entered by this Court was reversed and this Court was directed to enter judgment in accordance with the views expressed in the opinion of the Supreme Court, and Amended Findings of Fact and Conclusions of Law having been made to conform with said opinion, the Court hereby enters its Amended Decree predicated thereon.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The Strawberry Valley Reclamation Project is a reclamation project of the United States, built and operated under and in pursuance of the Reclamation Act of 1902 and ^{amendatory thereof and} acts/supplemental thereto.

2. That title to the project works is in the United States until otherwise provided by act of Congress.

3. That in addition to its right to store in the Strawberry Reservoir and use on the project waters diverted from the Colorado River watershed, the United States is the owner of the following direct flow rights to the use of water in Spanish Fork River on the Project:

- (a) a right to the use of a flow of 156 cubic feet per second of the waters of Spanish Fork River for the generation of power, extending throughout the year, with a priority date of December 6, 1906.
- (b) a right to the use of a flow of 300 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of February 4, 1909.
- (c) a right to the use of a flow of 90 cubic feet per second of the waters of Spanish Fork River for irrigation purposes, extending from March 1 to November 1 of each year, with a priority date of September 17, 1914.

4. That by contract with the United States the defendant Strawberry Water Users' Association is charged with the care, operation and maintenance of the project, except the High Line Canal and the Mapleton-Springville Lateral, and with distribution of the project water supply.

5. That contracts between the United States and the respective project water users, in the form of approved applications, have been made, beginning in 1913, under which the several water users, subject to payments being made as required thereunder and subject to the provisions of the Reclamation Act of 1902 and ^{amendatory thereof and} acts/supplemental thereto, are entitled to receive project waters.

6. That in order to reduce the demand for and to conserve project reservoir water the project management, in the exercise of good judgment and sound discretion, may make, against the amounts of project water to be furnished to the several water users under their

contracts with the United States, lesser charges than the full amounts thereof on account of the quantities of project river water delivered to such users; that the project management may likewise omit any charge against project water users for project river water diverted for the purpose of cleaning canals or as a flood control measure.

7. That the plaintiff canal companies and defendants Salem Canal and Irrigation Company, Spanish Fork South East Irrigation Company and Spanish Fork City have appropriative rights to use the natural flow of Spanish Fork River which the United States has by contract recognized as being prior in time to its direct flow rights to use the waters of said river; that under such rights said canal companies and said City are entitled to divert the following quantities of the natural flow of Spanish Fork River:

Spanish Fork East Bench Canal Company	95 c.f.s.
Salem Canal and Irrigation Company	55 c.f.s.
Spanish Fork South Irrigation Company	75 c.f.s.
Lake Shore Irrigation Company	60 c.f.s.
Spanish Fork West Field Irrigation Company	
Spanish Fork City and Spanish Fork South	
East Irrigation Company through Mill Race	
Canal	<u>105 c.f.s.</u>
Total	390 c.f.s.

8. That no costs are awarded to any of the parties.

Dated this _____ day of _____, 1960.

BY THE COURT.

JUDGE

Copies of the Amended Decree and Amended Findings of Fact and Conclusions of Law were mailed this 25 day of March, 1960, to The Attorney General of the State of Utah, State Capitol Building, Salt Lake City, Utah; Phillip V. Christenson, Provo, Utah; and Elias Hansen, Attorney at Law, Continental Bank Building, Salt Lake City, Utah.

A. P. [Signature]
United States Attorney

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE

STATE OF UTAH

IN AND FOR UTAH COUNTY

SPANISH FORK WEST FIELD IRRIGATION COMPANY,)
a corporation, EAST BENCH CANAL COMPANY, a)
corporation, SPANISH FORK SOUTH IRRIGATION)
COMPANY, a corporation, LAKE SHORE IRRIGATION)
COMPANY, a corporation, WILLIAM J. MONEY,)
JAMES NIKLSEN, DAVID E. WILLIAMS, ALLEN S.)
LARSEN, CIESLY BEARNSON, BURNELL HANSEN, RAY)
D. WILLIAMS, LAWRENCE C. JOHNSON, LORIN B.)
CREEK, DEAN HANSEN, GRANT LARSEN, THOMAS)
YOUNG, MARK HUFF, JENNINGS MEASON AND ALFRED)
BADDSCAARD; AND LEO BANKS, ARCHIE FRANCIS AND)
ROY CREEK, as members of the Board of Directors)
of defendant Strawberry Water Users Association,)
a corporation,)

Civil No.
18,826

Plaintiffs,

vs.

NOTICE OF APPEAL

UNITED STATES, a nation; DOUGLAS MCKAY, as)
Secretary of the Interior of the United States;)
WILBUR A. DEXHEIMER, as Commissioner of the)
Bureau of Reclamation of the United States;)
STRAWBERRY WATER USERS ASSOCIATION, a corpora-)
tion; WILLIAM GROTEGUT, GEORGE Q. SPENCER, A.C.)
PAGE, GLEN E. DAVIS, LABAN HARDING, DELL S.)
NIATT, E. R. NELSON, GEORGE W. LEXARON, JR.,)
H.H. FARR, SYLVESTER ALLEN, ARTHUR FINLEY,)
CLIFTON CARSON and RUBEN D. CARDNER, as members)
of the Board of Directors of the defendant)
Strawberry Water Users Association, a corpora-)
tion; STRAWBERRY HIGH LINE CANAL COMPANY, a)
corporation, and the members of its Board of)
Directors, ORAL STEWART, GLEN DAVIS, ANDREW)
LARSEN, GEORGE Q. SPENCER, JR. ANGUS CHRISTENSEN,)
EARNEST HANKS, LABAN HARDING, ARTHUR F. WICKMAN)
and DELL S. NIATT; SPRINGVILLE IRRIGATION DIS-)
TRICT, a body corporate and politic, and its)
BOARD OF DIRECTORS, ARTHUR FINLEY, GLEN SUMSION)
and REUL CRANDALL; MAPLETON IRRIGATION DISTRICT,)
a body corporate and politic and its Board of)
Directors, SYLVESTER ALLEN, NIEL WHITING and)
BRYAN TEN; SPANISH FORK CITY, a municipal corp-)
oration; PAYSON CITY, a municipal corporation;)
SALEM CANAL AND IRRIGATION COMPANY, a corpora-)
tion, and ERNEST HANKS and KEITH SIMONS, two)
of its stockholders; SPANISH FORK SOUTHEAST)
IRRIGATION COMPANY, a corporation, and GARLAND)
SWENSON and ROY BRADFORD, two of its stock-)
holders; CLINTON IRRIGATION COMPANY, a corpora-)
tion and BERT OBERMANSLEY and ERNEST W. MITCHELL,)
two of its stockholders; JOSEPH M. TRACY, State)
Engineer of the State of Utah,)

Defendants.)

NOTICE IS HEREBY GIVEN that the Defendants United States,
a nation, Douglas McKay, as Secretary of the Interior of the United
States, and Wilbur A. Dexheimer, as Commissioner of the Bureau of

Reclamation of the United States, as above named, hereby appeal to the Supreme Court of the State of Utah from the Amended Conclusions of Law and Amended Decree entered on the 17th day of June, 1960, by Judge Will L. Hoyt, and the whole thereof.

DATED this 15th day of July, 1960.

Perry W. Morton

Assistant Attorney General

David R. Warner

Chief, Water Resources Section
Department of Justice

C. L. L. L.

United States Attorney
District of Utah

Address: Department of Justice
Washington 25, D.C.

200 Federal Building
Salt Lake City, Utah

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE

STATE OF UTAH

IN AND FOR UTAH COUNTY

SPANISH FORK WEST FIELD IRRIGATION)	
COMPANY, a corporation, ET AL,)	Civil No. 18,826
Plaintiffs,)	
vs.)	DESIGNATION OF RECORD
UNITED STATES, a nation, ET AL,)	ON APPEAL
Defendants.)	

TO THE CLERK OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN
AND FOR UTAH COUNTY, STATE OF UTAH:

You are hereby requested to prepare, certify, and transmit to the Supreme Court of the State of Utah, with reference to the Notice of Appeal heretofore filed by the defendants United States, a nation, Douglas McKay as Secretary of the Interior of the United States, and Wilbur A. Dexheimer as Commissioner of the Bureau of Reclamation of the United States, in the above cause a transcript of the record prepared and transmitted as required by law in the rules of said court and to include in said transcript of record the following:

1. The original Findings of Fact and Conclusions of Law signed by the trial court on March 17, 1958.

2. The original Decree signed by the trial court on March 17, 1958.

3. The Decision of the Supreme Court of the State of Utah, number 8994, dated December 9, 1959 in the appeal of the above entitled matter.

4. The proposed Findings of Fact and Conclusions of Law submitted to the trial court by the defendant United States, a nation, March 25, 1960.

5. The Amended Conclusions of Law signed by the trial court on June 16, 1960 and entered on June 17, 1960.

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

OFFICE OF THE CLERK

July 21, 1960

County Clerk

City and County Bldg.

Provo, Utah

Spanish Fork West Field Irr. Co., et al.,
Plaintiffs and Respondents,

v.

No. 9314

United States, a nation; Douglas McKay,
as Secretary of the Interior of the United
States, et al.,

Defendants and Appellants.

This day

Notice of Appeal filed.

L. M. Cummings, Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

* -----
SPANISH FORK WEST FIELD :
IRRIGATION COMPANY, a :
Corporation, ET AL :
Plaintiffs and Appellants : No. 9314
-vs- : Civil No. 18,826
UNITED STATES, ET AL :
Defendants and Respondents, : CLERK'S CERTIFICATE

I, Mark F. Boyack, County Clerk and Ex-Officio Clerk of the
District Court of the Fourth Judicial District of the State of Utah,
in and For Utah County, do hereby certify that the above and foregoing are
the original

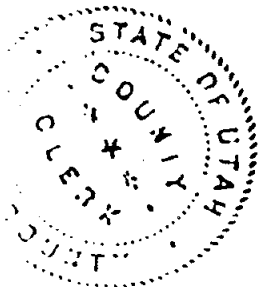
TITLE PAGE
INDEX PAGE
FINDINGS OF FACT AND CONCLUSIONS OF LAW
DECREE
REMITTITUR
AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AMENDED CONCLUSIONS OF LAW
AMENDED DECREE
NOTICE OF APPEAL
DESIGNATION FOR RECORD ON APPEAL
CLERK'S CERTIFICATE

in the above entitled action, and that they constitute the record on
appeal and are transmitted to the SUPREME COURT OF THE STATE OF UTAH,
pursuant to such appeal and order of this Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the official seal of said Court at my office in Provo, Utah County,
this 3rd day of August, 1960.

MARK F. BOYACK, COUNTY CLERK

BY 
Deputy



IN THE SUPREME COURT OF THE STATE OF UTAH

--ooOoo--

Regular February Term, 1961

February 28, 1961

- - -

Spanish Fork West Field
Irrigation Company, a corporation,
et al.,

Plaintiffs and Respondents,

v.

REMITTITUR
No. 9314

The United States, a nation, et al.,
Defendants and Appellants.

- - -

This cause having been heretofore argued and submitted and
the Court being sufficiently advised in the premises, it is now ordered,
adjudged and decreed that the judgment of the District Court herein be,
and the same is, affirmed. Each party to bear its own costs.

- - -

Issued: March 21, 1961

REMITTITUR
IN THE SUPREME COURT OF THE STATE OF UTAH

-oOo-

Spanish Fork West Field
Irrigation Company, a corpor-
ation, et al.,
Plaintiffs and Respondents,

v.

No. 9314

The United States, a nation, et al.,
Defendants and Appellants.

- - -

WADE, Chief Justice:

This is the second appeal in this case. See Spanish Fork West Field Irrigation Company v. The United States, 9 Utan 2d 428, 347 P.2d 184. In that case we reversed the trial court's decision but made definite limitations in some respects on the distribution of the water of the system involved and the amount to be charged for such water.

The United States and the other defendants appeal from the findings of fact and decree as amended by the trial court, claiming that such findings and decree are not in accordance with our decision. After a careful study of our previous decision and the trial court's amended conclusions of law and decree, we conclude that said conclusions and decree are in harmony with our previous decision and that the appellants have no ground for complaint. The decision is affirmed. Each party to bear its own costs.

WE CONCUR:

F. Henri Henriod, Justice

Roger I. McDonough, Justice

E. R. Callister, Jr., Justice

J. Allan Crockett, Justice

UNITED STATES OF AMERICA

State of Utah }
County of Salt Lake } ss.

I, L. M. CUMMINGS, Clerk of the Supreme Court of the State of Utah, do
hereby certify that the foregoing is a full, true and correct copy of the judgment rendered
and opinion filed
in the foregoing entitled action, now of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand

and affixed the seal of said Supreme Court this

the 21st

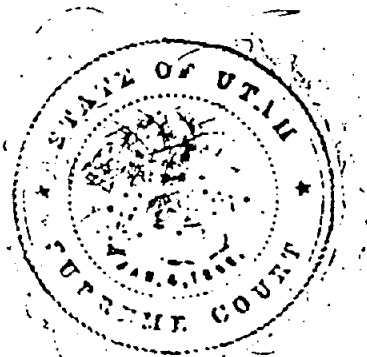
day of March A. D. 1961

L. M. Cummings

Clerk, Supreme Court

By

James E. Schaeffer
Deputy Clerk



6. The Amended Decree signed by the trial court on June 16, 1960 and entered on June 17, 1960.

DATED this 22nd day of July, 1960.

Perry W. Morton
PERRY W. MORTON
Assistant Attorney General

David R. Warner
DAVID R. WARNER
Chief, Water Resources Section

A. Pratt Kesler
A. PRATT KESLER
United States Attorney
District of Utah

Address:

200 Federal Bldg.
Salt Lake City, Utah

Department of Justice
Washington 25, D.C.

I hereby certify that copies of the above Designation of the Record on Appeal and Points Relied Upon have been mailed this 22nd day of July, 1960, to Elias Hansen, Attorney for Plaintiffs, 721 Continental Bank Building, Salt Lake City, Utah; to Christenson, Paulson & Novak, Attorneys at Law, 55 East Center, Provo, Utah; and Walter L. Budge, Attorney General, State Capitol Building, Salt Lake City, Utah.

A. Pratt Kesler
A. PRATT KESLER
United States Attorney